

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Telecommunications)	
Act of 1996: Telecommunications Carriers')	
Use of Customer Proprietary Network)	CC Docket No. 96-115
Information and other Customer Information)	
)	
Petition for Rulemaking to Enhance Security)	RM-11277
and Authentication Standards for Access to)	
Customer Proprietary Network Information)	

To: The Commission

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE
AND THE USMSS, INC.**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), together with the USMSS, Inc. (“USMSS”), an affiliated entity of the Alliance, in accordance with Section 1.425 of the Federal Communications Commission (“FCC” or “Commission”) Rules and Regulations, respectfully submits its comments in the above-entitled proceeding.¹ The NPRM seeks comments on what additional steps the Commission should take to protect the privacy of customer proprietary network information (“CPNI”) that is collected and held by telecommunications carriers. The Alliance supports this FCC effort, but also urges the Commission to ensure that its CPNI rules target only those telecommunications carriers that have access to the type of

¹ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and other Customer Information*, Notice of Proposed Rulemaking, CC Docket No. 96-115, RM-11277 (rel. February 14, 2006) (“NPRM”).

information that Congress and the FCC have determined is vulnerable to and should be protected from unauthorized use.

I. INTRODUCTION

EWA represents a broad alliance of business enterprise users, communications service providers, radio dealers and technology manufacturers, all of which use or provide wireless telecommunications products or services. The USMSS, is a national membership of authorized Motorola Service stations that own and operate sales and service businesses throughout the country. Many of the Alliance's members operate private radio systems used for internal communications. Such systems are not subject to the CPNI rules. However, a number of EWA's members, as well as a significant percentage of USMSS members, operate small commercial systems serving primarily the dispatch market, although some have ancillary interconnection capability as well. Since all such members are classified as telecommunications carriers² pursuant to the Communications Act, this matter is of significant interest to the Alliance.

II. BACKGROUND

Congress recognized that CPNI was at risk of being misused and set out to prohibit such conduct when it amended the Communications Act to include Section

² As discussed *infra*, both the Communications Act and the corresponding Commission rules governing CPNI specify that the regulations apply to "telecommunications carriers." The term "telecommunications carrier" is defined in the Communications Act as any provider that offers telecommunications services for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.. The term has been interpreted by the FCC to include even carriers that are not interconnected with the telephone network and even entities that hold no FCC licenses, but simply operate the telecommunications facilities for which users hold the licenses.

222 in enacting the Telecommunications Act of 1996 (“1996 Act”).³ More recently, in response to information indicating specific instances of improper use of CPNI, in particular the sale of cellular telephone information over the Internet, Congress and the Commission have determined to examine whether further protections are required.

The Alliance strongly supports the pro-user/consumer protection of proprietary telephone information. In a society where identity theft and other criminal acts against privacy are rampant, the Alliance appreciates both legislative and regulatory initiatives to deter the unauthorized dissemination and sale of highly sensitive information from consumers’ telephone records. EWA applauds the consumer watch group, Electronic Privacy Information Center, for arming the Commission with the evidence needed to strengthen the CPNI rules and to fulfill the mandate of Section 222.

However, in its effort to strengthen these protections, it also is important that the FCC not cast its regulatory net wider than is necessary to achieve its objective. The CPNI rules were enacted to protect consumers from the misuse of their proprietary information that was possible in the types of joint marketing arrangements that large carriers often have with their affiliates or with entirely unrelated organizations. Moreover, it is clear that these rules are intended to protect proprietary information that is related to the provision of telephone service, whether wireline or wireless. In fact, the second prong of the CPNI definition

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. §§ 151 *et seq.*), 47 U.S.C. § 222.

specifically identifies “information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.”⁴ However, because the statute and the FCC rules in which the statute is codified⁵ are applicable to all telecommunications carriers, by their terms, if not by intention, they impose the CPNI requirements on carriers that do not collect and/or do not market the type of information that is susceptible of abuse. As detailed herein, EWA urges the FCC either to exempt these carriers from the CPNI regulations entirely or to create a simplified safe harbor whereby they may demonstrate their satisfaction of those rules.

⁴ 47 U.S.C. § 222(h)(1)(B).

⁵ 47 C.F.R. §64.2009.

III. THE COMMISSION SHOULD EXEMPT NON-INTERCONNECTED TELECOMMUNICATIONS FROM CPNI REQUIREMENTS.

The CPNI rules clearly are intended to protect the privacy of information related to the provision of telephone service. Yet, by their terms, they also apply to carriers that do not offer interconnected service at all, but provide only two-way dispatch capability to their customers. There are many small operators around the nation, typically operating Part 90 or non-cellular Part 22 systems utilizing only a single channel or a handful of channels to offer localized dispatch service to business, industrial and governmental users. The customers on these systems have no access to the telephone network; their communications are between operators of mobiles and portables in the field and a dispatcher at a console in an office. They generate no telephone records to protect. The carrier does collect certain information for billing purposes such as the number of units they are operating and the customer's billing information, but this data is a matter of indifference to any third party. Most important, it is not the type of information that the customer would consider proprietary, although it could include "the quantity" and "amount of use" that is made of the "telecommunications service"⁶ since the system operator needs that data to prepare an accurate invoice.

⁶ 47 U.S.C. § 222(h)(1)(A).

These entities have no “cross-marketing” arrangements whereby they sell or exchange this very limited customer information to affiliates or to third parties. Frankly, there is no commercial value to the data and, to the best of EWA’s knowledge, it has never elicited any third party interest. These carriers have no CPNI to protect as that term is intended by Congress and the FCC.

Therefore, EWA urges the Commission to expressly exempt non-interconnected telecommunications carriers from the CPNI requirements. Informal discussions with Commission staff have indicated some disagreement as to whether or not they are subject to the obligations and some such entities were advised by FCC staff that they were not required to submit annual certifications in response to the recent Commission Public Notice.⁷ However, because even these non-interconnected operators are classified as telecommunications carriers, an affirmative declaration by the FCC that they are not subject to CPNI rules is needed to avoid future confusion.

IV. FCC SHOULD APPLY THE “COVERED CARRIER” DEFINITION TO EXCLUDE SMALL INTERCONNECTED CARRIERS FROM CPNI REGULATIONS OR, ALTERNATIVELY, SHOULD ADOPT A “SAFE HARBOR” SHOWING IN RESPECT TO CPNI OBLIGATIONS FOR CARRIERS THAT DO NOT MEET THE “COVERED CARRIER” DEFINITION.

EWA also has members that operate primarily dispatch systems similar to those described above, but also offer ancillary interconnection capability. The interconnection provided is insignificant, at least by comparison with cellular-type

⁷ Enforcement Bureau Directs All Telecommunications Carriers to Submit CPNI Compliance Certifications, *Public Notice*, DA 06-223, released January 30, 2006.

systems. It rarely, if ever, uses SS7 signaling since the system equipment is not sufficiently sophisticated to handle that type of interconnection. The majority do not offer individual DID lines that permit customers to have their own, unique telephone numbers. Instead, the carrier takes service as a business customer of the telephone provider, not as a co-carrier, and provides over dial numbers that are specific to the radio unit. In this situation, the telephone records associated with the service are “proprietary” to the carrier itself, not to its customers.

Historically, the fleet manager or small business owner would have interconnection and dispatch capability in his or her own radio, while the rest of the fleet would have dispatch-only capability. With the almost ubiquitous availability of cellular service nationwide, this ancillary capability is becoming less attractive to dispatch users. Nonetheless, it is still available, particularly in rural areas.

Aside from their customers’ name and number of units operated, EWA and USMSS members do not collect the type of information contemplated by the CPNI rules. The carriers providing this service do not collect information from their customers regarding the frequency, duration or timing of calls except as needed to generate an invoice. They do not routinely collect location and destination information from their customers since that data is not relevant for billing purposes. Like dispatch-only systems, these carriers do not have joint-marketing relationships with the types of large telecommunications companies that were Congress’ primary focus when enacting Section 222 and do not market what limited customer information they have to any third-parties, including brokers, because

that information is of no commercial value to any other party. Thus, the Alliance and USMSS do not believe that these are the types of systems that were intended to be subject to CPNI regulations and recommends that the FCC adopt one of the two alternatives below to address this type of dispatch-focused, small, interconnected telecommunications carrier.

EWA recommends that the FCC utilize the same “covered carrier” definition that it has applied to similar regulatory matters to exempt these carriers from the CPNI obligation.⁸ The “covered carrier” concept is a practical, functional delineation between cellular architecture systems with sufficient capacity to provide service to the general, consumer public and those that serve a more specialized customer base such as the systems operated by EWA and USMSS members as described above. The concept recognizes that certain obligations may be appropriate for telecommunications carriers that offer service to consumers, but not for those that serve a much more targeted, business-oriented customer basis. This delineation has proven a useful line of demarcation in other instances and should be adopted for CPNI purposes as well.

While the Alliance believes strongly, that the FCC should adopt a “covered carrier” concept for CPNI purpose, if it does not, the Alliance and USMSS urge the FCC to at least adopt a “safe harbor” for CPNI compliance for entities that are not classified as “covered carriers.” In the NPRM, the Commission asked whether small telecommunications carriers should be subject to different CPNI-related obligations

⁸ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Second Report and Order, 19 FCC Rcd 16964 (2004).

than large telecommunications carriers (*e.g.*, whether small carriers should be given a longer period of time to comply with any new requirements that the Commission adopts).⁹ The Alliance and USMSS appreciate the Commission's recognition that regulatory obligations sometimes impose disproportionately greater burdens on small than large licensees. Collection of CPNI such as data encryption, pass codes or audit trails may be impossible for most Alliance and USMSS members in any practical sense as their systems do not include this type of data. Requiring them to purchase additional software and retrofit handsets and hardware to provide protection for information they do not maintain would be a counter-productive, cost-prohibitive undertaking for small carriers and would serve no public interest.

Instead, if the Commission does not exempt non-“covered carriers” entirely, it should require only a limited CPNI certification from such carriers by allowing them to certify that they: (1) do not collect call detail records, (2) do not use CPNI for any purpose other than permitted use under Section 64.2005 of the Commission's rules and (3) do not disclose CPNI to third parties except as permitted under Section 64.2005. This would provide the Commission with an affirmative confirmation that these carriers are operating in conformance with the rules and provide a basis for enforcement activity in the highly unlikely event that any such entity is believed to have violated those requirements. This streamlined approach not only would conserve licensees' resources, but FCC resources as well. The Commission may not appreciate the very large number of small telecommunications carriers that otherwise will be obligated to submit such

⁹ NPRM at ¶ 30.

documentation as will be required under whatever rules are adopted. Since the FCC presumably intends to review whatever information it determines to collect in respect to CPNI obligations, the alternative showing recommended herein will save significant Commission resources.

V. CONCLUSION

For the reasons described herein, EWA and USMSS urge the Commission to adopt rules consistent with the recommendations herein.

Respectfully submitted,

ENTERPRISE WIRELESS

ALLIANCE

/s/ Mark E. Crosby
President/CEO
8484 Westpark Drive, Suite 630
McLean, Virginia 22102
(703) 528-5115

USMSS, Inc.

/s/David J. Robison
Chairman
216 Haywood Street
Asheville, North Carolina 28801
(828) 254-1947

Counsel:

Elizabeth R. Sachs
Tamara Davis-Brown
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Blvd., Ste. 1500
McLean, VA 22102
(703) 584-8678

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